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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of COLLEEN and
BRADFORD PILZ.

COLLEEN P. PILZ,

Respondent,

v.

BRADFORD J. PILZ,

Appellant.

G040955

(Super. Ct. No. 04D010972)

ORDER MODIFYING OPINION
AND DENYING REHEARING; NO
CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on October 15, 2010, be modified as follows:

1. On page 2, delete the second and third sentences of the second full paragraph and insert the following two sentences in their place:

But husband's first assignment of error has some merit. Thus, we reverse the judgment's property division and remand the matter for a new trial to determine the

extent of the community's interest in both the vehicle leasing business's distributions during marriage and the assets to which these proceeds were traced.

2. On page 12, delete the first and second paragraphs and insert the following in their place:

But the trial court erred in failing to make a determination as to the extent of the community effort in creating Sunnybrook's profits. "If there is evidence of enrichment of separate property, the probable contributions of the community and of the capital investment of the [owner-spouse] must be determined from all the circumstances of the case. This requires findings of fact." (*Strohm v. Strohm* (1960) 182 Cal.App.2d 53, 62.) The trial court's October 11 clarification of the statement of decision declared "[i]nsufficient evidence was provided at trial . . . to make a finding of the value of the community's service[s] to Sunnybrook during the parties' marriage" This statement conflicts with the court's other findings that Sunnybrook could not run itself, both husband and wife participated in operating the corporation, and that their efforts in doing so "were not de minim[i]s."

3. On page 12, in the third full paragraph, insert the word "Thus" at the beginning of the first sentence so that sentence reads as follows:

Thus, as husband notes, the trial court misunderstood its duty in applying the foregoing apportionment principles in this case.

4. On page 12, in the third full paragraph, delete the fourth and fifth sentences beginning with the word "Further," and insert the following sentences in their place:

But, it was also necessary for the court to make a determination as to extent of community effort in creating Sunnybrook's distributions. As a consequence, the finding that all of Sunnybrook's distributions were community property plus the characterization and division of other assets premised on this finding must be reversed with directions to conduct a new trial to determine the extent of both the community's

effort in producing those distributions and its interest in the assets to which those distributions can be traced.

5. On page 14, delete the second and third sentences of the paragraph appearing after the title “DISPOSITION,” and insert the following sentences in their place.

To the extent the judgment’s characterization of the parties’ assets is based on its finding that all of the distributions from Sunnybrook Leasing, Inc. constitute community property, the judgment is reversed. The matter is remanded for a new trial to determine both the extent of the community’s interest in Sunnybrook Leasing, Inc.’s distributions and the community’s interest in those assets to which those distributions can be traced.

There is no change in the judgment. Respondent’s petition for rehearing is DENIED.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

O’LEARY, J.